P.R. No. 9940 S
Presented by Shri Rajan Sharma
dated 04.10.05

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 187 / 2005 **SINGLE BENCH**

Appellant / Plaintiff	Sukhiram, S/o Paharuram Aged About 42 Yrs, R/o Vill. Mudapar, Teh. Palaari, Distt. Raipur

VERSUS

Respondents/ Defendants	1. State of Chhattisgarh, Through, Collector, Raipur 2. Additional Tehasildar, Palaari, Distt. Raipur 3. Sarpanch, Village Panchayat Mudapaar, Teh. Palaari, Distt. Raipur

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE, 1908

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

आदेश पत्रक

मामला क्रमांक S.A. No. 187/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

07.12.2005

Shri Raja Sharma, counsel for the appellant.

Shri Sanjeev Agrawal, P.L. for the State.

Heard on admission.

The appellant has preferred this Second Appeal under Section 100 of the CPC as the suit for perpetual injunction and in the alternative possession was dismissed by the Civil Judge Class-II, Baloda Bazar and the appeal preferred by the appellant has also been dismissed by the impugned judgment and decree.

Case of the plaintiff before the trial Court was that he is a landless person and the Additional Tahsildar, Baloda Bazar issued a patta dated 15/02/1983 to the appellant on which he is residing after constructing a room and running a hotel. However the revenue authorities dismantled the same on 12/11/2001 and on the basis of the above conduct of the revenue authorities he had apprehensions that the defendants shall dispossess him from the suit property and therefore the above suit for perpetual injunction has been filed.

Defendant No.1 did not file any written statement. However, defendant No.2 in the written statement has stated that the plaintiff has encroached upon the Government land and doing his hotel business and the encroachment was removed by the revenue authorities as per order dated 06/11/2001 passed in Revenue Case No. 37-A/1968. The land in question was never given on lease to the plaintiff and therefore the question of canceling the lease did not arise. The suit land is described as land under water in the revenue records and therefore the same could not be allotted unless the land is diverted as per provisions of Section 237(2)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(15)

आदेश पत्रक

मामला क्रमांक S.A. No. 187 सन् 05 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the Code and the land can be allotted only after fixing the premium of the land.

It was also objected that the documents are forged and fabricated and it does not bear the revenue case number. Defendant No.3 also denied the averments of the plaintiff and pleaded that the patta was never granted in the name of the plaintiff. On the basis of pleadings of respective parties, issues were framed and learned trial Court dismissed the suit after recording a finding that the plaintiff has failed to prove his ownership of the suit property or his legal possession over the suit property and accordingly it was held that he is not entitled for perpetual injunction. The document of Ex.P.1 was though held that it was not fabricated or forged but it has been further held that it was not in accordance with law. The appellant preferred an appeal against the above judgment and the same has been dismissed.

Learned counsel for the appellant vehemently argues that the trial Court has held the document of Ex.P.1, Patta as neither forged nor fabricated and even then the suit has been dismissed with a finding that the patta is not in accordance with law. It is argued that it is not open to the Civil Court to go into the fact that whether the patta purportedly issued by the Tahsildar has been validly issued by him. Once it was held that the document is neither forged nor fabricated, the same could not be brushed aside by holding that it is not in accordance with law as the same is not within the purview of the Civil Court and therefore it is argued that the following substantial question of law arises for adjudication of this appeal:

"Whether the Civil Courts have the jurisdiction to go behind a legal instrument conferring

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(15)

आदेश पत्रक

मामला क्रमांक S.A. No. 137 सन् 05 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

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bhoomiswami rights (Ex.-P/1) to enquire and decide its legality and propriety of procedure followed for conferring such rights especially when the legal instrument concerned is a public document and on facts it has been found to be not a forged document and not cancelled as per law?"

I have heard learned counsel for the appellant.

The plaintiff has filed the instant suit for perpetual injunction basing his claim on document of Ex.P/1 being a patta granted in his favour by the concerned Tahsilar. Both the Courts below have held that the document of Ex.-P/1 has not been issued in accordance with law. This finding is based on the documentary and oral evidence available on record. The submission of the counsel for the appellant that the Courts below have traversed beyond the jurisdiction while holding that the document has not bee issued in accordance with law cannot be accepted. Since the case of the plaintiffs rests on the document of Ex.P/1, he was required to establish by adducing cogent evidence that the same was validly issued by the competent authority after following the procedure prescribed in the land revenue ~~Court~~ Code and since he has failed to establish the same by evidence, the suit has been dismissed. On the basis of the aforesaid discussions no substantial question of law arises for adjudication of this second appeal as proposed by the appellant and the appeal is without any merit, is dismissed at the admission stage.

Sd/-
Dhirendra Mishra
Judge

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19.12.05